

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
BRIEF &
APPENDIX**

77-1249

UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

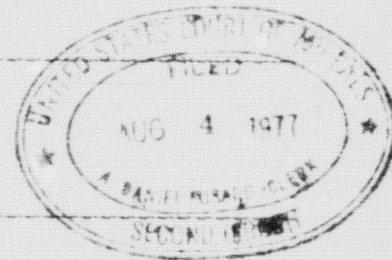
- against -

BARTHOLOMEW BUIGUES, ANGELO PUIG,
IRMA ANES, SUSAN HOROWITZ and
JOHN SAMMARCO,

Defendant-Appellants.

On Appeal from the United States District Court
For the Southern District of New York

BRIEF AND APPENDIX FOR
APPELLANT ANGELO PUIG



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UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE SECOND CIRCUIT

Docket No. 77-1249

UNITED STATES OF AMERICA,

Appellee,

- against -

BARTHOLEMEW BUIGUES, ANGELO PUIG,
IRMA ANES, SUSAN HOROWITZ and
JOHN SAMMARCO,

Defendant-Appellants.

BRIEF FOR THE APPELLANT ANGELO PUIG

Preliminary Statement

Angelo Puig appeals from judgments of conviction entered December 6, 1977 in the United States District Court for the Southern District of New York, after a six day trial before the Honorable Milton Pollack, United States District Judge, and a jury.

Indictment 76 Cr. 864 was filed on August 3, 1976 charging defendants Puig, Bartholemew Buigues, Irma Anes, Susan Horowitz, and John Sammarco (a) with violating Title 18

United States Code, Section 371 by conspiring to defraud the United States Government and violating Title 18 United States Code, Section 287, and (b) in two substantive counts with violating Title 18 United States Code, Sections 287 and 2 by filing false claims with the United States Department of Agriculture.

The trial was conducted on November 29, 30, and December 1, 2, 3, and 6, 1976. All defendants were found guilty on all counts.

Defendants were sentenced on January 17, 1977. Puig received concurrent sentences of two years on each count, execution of all but two months of which was suspended, and probation for two years. Buigues was sentenced to two years on each count to run concurrently, execution of all but three months of which was suspended, and probation for two years. Sammarco received concurrent sentences of two months on each count. Anes received a suspended sentence on each count and a \$1,500 fine. Horowitz received a suspended sentence on each count and a \$1,000 fine. Defendant Puig has already served the jail portion of his sentence.

STATEMENT OF THE CASE

A. The Government's Case

In July and August 1975 Youth in Government ("YIG"), an otherwise inactive non-profit corporation of which defendant

Buigues was Chairman of the Board and defendant Puig was Executive Director, sponsored a summer lunch program for children in New York City. YIG operated during these months from a store front at 2176 Amsterdam Avenue in Manhattan. The food was purchased from AMPM Food Services and delivered directly to YIG's 43 distribution sites where it was distributed to children. YIG oversaw the entire operation through its employees, many of whom served as monitors at the distribution sites (27-45*).

The program was financed by the United States Department of Agriculture ("USDA"). Originally 63 sites had been selected, but due to a budget cutback at USDA, YIG's activities were reduced to 43 sites (113). The budget for the program filed in June 1975 indicated that defendant Irma Anes worked as YIG's Administrative Assistant and that defendant John Sammarco and Susan Horowitz worked as monitors (27-45, 113; Exhs. 1, D, E).

To obtain funding from the USDA, YIG submitted monthly vouchers for reimbursement for its costs of the meals from its supplier, plus an allowance for administration not to exceed six cents per lunch (49; Exhs. 2, 3). YIG filed such vouchers indicating total monthly administrative costs for this purpose

* All references, unless otherwise indicated, are to pages of the trial transcript.

on August 22 and August 29, 1975, respectively, for its July and August activities, and received payment for its costs in September 1975. The payroll book, prepared by Anes who served as YIG's bookkeeper, indicated that all employees of YIG, including these three defendants, worked seven hours a day (Exh. 4). Defendant Anes was paid \$200 per week for her services, or a total of \$1,600 before deductions. Defendants Sammarco and Horowitz were each paid \$110 per week, or \$880 before deductions, for their services (83; Exh. 4).

Three witnesses (Gilchrist, Rogers, and Frank Rodriguez) testified that they had worked for YIG during the summer as monitors receiving \$110 per week, two of them for less than seven hours per day. Pedro Rodriguez testified that he was an office clerk in July and served as a monitor in August. All four witnesses testified that defendants Sammarco and Horowitz were introduced to them by Puig as supervisors of the program at a meeting on June 27, 1975. They also testified that they thereafter saw Sammarco at the office on a number of occasions during the following month, and that they saw Susan Horowitz relatively little thereafter (108-21, 219-30, 278-88, 355-63). On cross-examination, however, Gilchrist and Rodgers admitted that as monitors they spent little time at the office during the day because they were usually visiting distribution sites (153, 338).

Rogers also testified that in August 1976 he was approached by Puig and four or five other persons on the street. While one of the group was restrained from trying to strike Rogers, Rogers was told that if he had testified before the Grand Jury he would be pushing up daisies (287-88).

A representative of Arawak Consulting Corporation testified that Susan Horowitz was employed full time by Arawak as a Staff Associate in July and August 1975 (459-73; Exhs. 15-17). A representative of Querer, Inc. testified that Irma Anes was employed full time by Querer as an Administrative Assistant in July and August 1975 (444-53; Exhs. 9-14).

Carl Bogen, an investigator for the United States Attorneys Office, testified that when interviewed Puig stated that Sammarco and Horowitz worked full time as troubleshooters who would touch base with the USDA when there was a problem, that Anes, a girlfriend of Buigues employed at his request, served as an administrative assistant by doing bookkeeping at irregular hours such as nights and weekends, and that he did not recall whether Horowitz and Sammarco had other jobs (497-503).

B. The Defense Case

Defendant Puig testified. He was a student at Columbia and held another job at the time of the program. He denied any fraudulent intent with respect to the applications for reimbursement of salaries paid to defendants Sammarco,

Horowitz and Anes. He testified that they each did the work expected of them although candidly admitted that it was not as much as seven hours per day (799). He said that Horowitz worked very early each day because she was assigned to visit the supplier of food each morning at 5:30 a.m. to check on quantities being shipped, quality of produce, and timing of deliveries (803, 874). Sammarco was employed as a liaison with the USDA and worked in such capacity except for a period in August when he went to Florida for about a week (801, 822-23). Defendant Anes worked on YIG's books nights and weekends. Puig admitted meeting Rogers on the street but denied any threat having occurred in his presence (811-14).

Puig's testimony was corroborated by a number of other witnesses. Nat Paul Massielli, Production Manager of AMPM Food Services, testified that Horowitz regularly reported at his plant where the food was prepared each morning (637-39). Janet Nieves testified that she reached Horowitz at AMPM Food Services by telephone, and knew Sammarco as YIG's liaison with the USDA and saw him frequently (684). Four witnesses testified that they regularly reached Sammarco by calling him at YIG's office (611-15, 929-34). Two other YIG monitors also described their functions and the fact that one of them saw Horowitz, Anes and Sammarco at YIG's office (654-64, 936-39). Buigues denied that any of the three were hired for "no show" jobs, and

testified that each of the three persons concerned worked on the job they were hired for (973-80, 998). Irma Anes testified that although she worked at Querer during the days, she regularly worked on YIG's books at YIG's office in the evenings (700-29).

Robert Eadie, Manhattan Borough Co-ordinator for the USDA Summer School Program, testified with respect to a USDA budget cut which caused the allowance to YIG to be substantially reduced, an on-site inspection of YIG, and the absence of guidelines issued by the USDA for sponsoring organizations with respect to its employees (548-96). Frank Cedo, who had borrowed \$1,000 for YIG from Sammarco, and Sammarco's aunt described the circumstances of the loan (611-15, 620-25). Five character witnesses were called by Horowitz (836-37, 840-41, 952-62) and three by Buigues (669-70, 826-33), one of also whom testified for Puig (826-27).

POINT I

THE GOVERNMENT'S CASE AGAINST PUIG WAS INSUFFICIENT FOR SUBMIS- SION TO THE JURY

The government advanced two theories of fraudulent intent. One was that three employees of YIG had "no show" jobs, that is, they worked very little if at all. The other theory

was that YIG's payroll book recited that these three employees worked seven hours a day whereas the proof showed that all employees, including Sammarco, Horowitz and Anes, worked less even if they performed the jobs assigned to them. The proof in this case failed to establish either conspiratorial intent or specific intent to make out a false claim and does not support a conviction of Puig under either theory.

The crux of the government's case was that essentially no work was done by Sammarco, Horowitz and Anes. But at the conclusion of the government's case the government had failed to sustain this charge. At best the proof showed that Horowitz was not seen around the office much during the month of July, that Horowitz and Anes had other jobs during the business day, and that Sammarco went on a trip to Florida for about a week in August. This proof was as consistent with an interpretation of Puig's innocence as of guilt. As the defense proof showed, the USDA budget cutback in turn reduced the number of sites at which YIG could operate its program and reduced YIG's operations. Horowitz was able to perform her work by visiting the food supplier in early morning, and Anes did her bookkeeping for YIG at night. Sammarco was shown to be available at YIG much of the time. Thus, taken at its most favorable to the government,

the trial proof was clearly not enough to show that these three defendants were known by Puig to have performed little or no work. Without such proof there was clearly not enough to justify a finding that there was a conspiracy to defraud or a specific intent to make a false claim.

The only other inculpatory evidence was the testimony of Rogers concerning a threat by Puig, a year after the alleged conspiracy, that Rogers not testify before the Grand Jury. While a threat of this nature is admissible as tending to prove guilty knowledge, it is not sufficient to provide a basis for the jury's verdict where other evidence of guilt is weak. United States v. Johnson, 513 F.2d 819, 824 (2d Cir. 1975) (false statement). See also United States v. Lopez-Ortiz, 492 F.2d 109 (5th Cir. 1974) (flight). Since the other evidence was by itself clearly insufficient, the evidence of a threat did not provide a basis for submitting the case to the jury.

As a fallback position, the government also argued that the statement in the payroll book that all YIG employees worked seven hours a day was false inasmuch as witnesses testified that employees at YIG worked substantially less than that each day. But this theory does not establish intent to make fraudulent claims. There was no showing that the statement as to number of hours was thought by

anyone at YIG to be material to the claim for reimbursement or was anything other than a pro forma record. Indeed, the payroll work was not even submitted to the USDA with the vouchers and was simply to be available for subsequent audit. The salaries were in fact paid and the only valid issue was whether the work was done, not how long it took. As part of the government's case, USDA official Spencer testified that even if the payroll book stated that the YIG employees worked only three hours a day the USDA would have no objection. At worst the reasonableness of the salary might have been questioned (88, 103-4). Thus, there was no proof that the entries made in YIG's payroll book as to number of hours worked were intended to or did defraud the government since payment to YIG by USDA would have been forthcoming anyway. United States v. Regent Office Supply Co., 421 F.2d 1174, 1179 (2d Cir. 1970). The proof being insufficient, the conviction must fall.

POINT II

APPELLANT PUIG ADOPTS ALL RELEVANT ARGUMENTS MADE IN CO-APPELLANTS' BRIEFS

Pursuant to Rule 28(i) of the Federal Rules of Appellate Procedure, appellant Puig adopts all relevant arguments made in any co-appellant's brief.

CONCLUSION

The conviction of appellant Puig should be reversed.

Respectfully submitted,

Daniel J. Sullivan
Attorney for Defendant-
Appellant Angelo Puig
250 Park Avenue
New York, New York 10017
(212) 697-4100

Dated: New York, New York
August 4, 1977

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PAGINATION AS IN ORIGINAL COPY

U.S. DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK	0848	PUIG, ANGELO	08 31 76	0864	02
x 0208 1			05		

18:371 18:287	OFFENSES CHARGED Consp. to commit offenses against U.S. False claims against U.S. Agency.	1 2,3
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ARREST	INDICTMENT	SENTENCE
8-31-76	8-31-76 9-9-76 9-9-76	11-24-76 12-4-76 1-17-77

SEARCHED	INDEXED	DATE	INITIALS
Warrant	Return		
Summons	Return		
Arrest Warrant	Return		
Complaint	Return		

Jeremy G. Epstein
791-0036

Ernest H. Hammer
120 Broadway
New York, N.Y. 349-7380

Buigues, et al.

DATE	DOCUMENT NO.	PROCEEDINGS
8-31-76		Filed indictment.
9-9-76		Deft. (Atty. Present) pleads not guilty. Deft. ordered P/P and R.O.R. Case assigned to Pollack, J...Haight, J.
09-10-76		Filed notice of appearance of atty. E. H. Hammer.
09-23-76		Pre-trial before Pollack, J. 2 10-28 E 1
11-24-76		Deft. (atty. Ernest H. Hammer) hearing held re: atty. E.H. Hammer presenting all three defts. Record ordered sealed by the Court. Pollack, J.
11-29-76		Jury trial begun before Judge Pollack.
11-30-76		Trial cont'd.
12-1-76		Trial cont'd.
12-2-76		Trial cont'd.
12-3-76		Trial cont'd.
12-4-76		Trial cont'd and concluded. Deft. found guilty on cts. 1,2,3. Bail set at \$15,000.P.R.B. to be posted by close of business on 12-3-76. Date of sent. 1-17-77 at 10AM. P.S.I. ordered. Pollack, J.

IV. PROCEEDINGS (continued)

PAGE TWO

V. EXCLUDABLE DELAY

For Identifying
Periods of Excludable
Delay Per 18
U.S.C. 3161(h)A Examination of
Prisoner for
Mental Health
U.S.C. 4244B NARA Exam
nation U.S.C. 2902C State or Federal
Prison on other
chargesD Introductory
AppealsE Hearings on
pretrial motionsF Transfers from
other district
(per F.R.C.P.
Rules 20, 21
& 40)G Detention Mo-
tion is actually
under admin-
istration of
up to 30 day
excludable
U.S.C. 3161(h)(1)(G)H Miscellaneous
proceedings
Extradition or
Parole Hearing
or Deportation
HearingsI Pre-arrest dete-
rred by
mutual agree-
mentM Unavailability
of defendant
or essential
witnessN Period of in-
carceration
incompetence
of defendant to
stand trialO Period of
NARA Com-
missioner of
TreatmentP Superseding
indictment
and/or new
chargesQ Detention
pending the
of Co-defendant
where no
supervision has
been grantedR Continuance
Granted per
3161(h)(1)
The ends of
justice require
of case
discovery
indicatesS Time between
arrest and
trial with
usualT Grand Jury in
district ex-
cluded per
3161(h)(1)

Filed \$15,000. Unsecured Personal Recognizance Bond.

Filed one envelope ordered sealed. Pollack, J.

Filed Judgment (atty. Ernest H. Hammer) Cts. 1,2,3:
2 yrs. Impr. ea. ct. conc. SERVE 2 mos. remainder
of bal of sent. EJS.S. 2 yrs. prob. 18:3651.Deft. cont'd. on bail until 1-24-77, etc. Pollack, J.
issued all copies.Filed notice of appeal from judgment of 1-17-77.
Mailed copiesFiled J&C and marshal's return, deft. delivered to:
M.C.C. N.Y.C. 1-24-77.

FILED TRANSCRIPT OF RECORD OF PROCEEDINGS DTD: 11/29, 30, 1976

12/1, 2, 1976

12/3, 6, 1976

Filed Notice that Supplemental record on appeal has been certi-
fied and transmitted to USCA, 2nd Circuit.

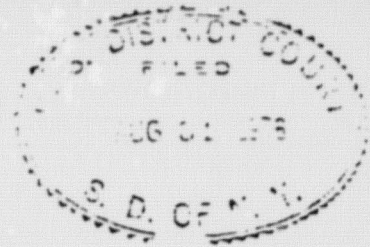
FILED TRANSCRIPT RECORD OF PROCEEDINGS DTD: 1/17/77

Filed transcript of record of proceedings, dated 1-17-77

FINE AND RESTITUTION PAYMENTS

RECEIPT NUMBER	C.D. NUMBER	DATE	RECEIPT NUMBER	C.D. NUMBER

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



UNITED STATES OF AMERICA

- v -

BARTHOLOMEW BUIGUES,
ANGELO PUIG, IRMA ANES,
SUSAN HOROWITZ, and JOHN SAMMARCO,
Defendants.

INDICTMENT

76 Cr.

76 CRIM 884

The Grand Jury charges:

INTRODUCTION

1. In enacting Title 42, United States Code, Section 1751 et seq., The National School Lunch Act, the Congress of the United States empowered the United States Department of Agriculture to provide food to children participating in non-profit school lunch programs.
2. Pursuant to Title 42, United States Code, Section 1761, the United States Department of Agriculture is further empowered to administer Special Summer Food Service Programs for Children, which programs were intended to provide food during the summer to children from areas in which poor economic conditions exist.
3. During July and August, 1975, the Special Summer Food Services Program in New York State was administered by the Food and Nutrition Service of the United States Department of Agriculture. The Food and Nutrition Service would and did enter into agreements with private, non-profit organizations, designated as service institutions under the National School Lunch Act, that undertook to operate food service programs for needy children with funds provided from the United States.

4. At all times relevant herein, Youth In Government was a non-profit corporation duly organized and existing under the laws of the State of New York, with its principal office at 2176 Amsterdam Avenue, New York, New York.

5. At all times relevant herein, BARTHOLOMEW BUIGUES, the defendant, was chairman of the board of Youth In Government.

6. In July and August, 1975, Youth In Government, pursuant to agreement with the Food and Nutrition Service of the United States Department of Agriculture, operated a Special Summer Food Service Program for Children in the Borough of Manhattan in New York City.

7. During July and August, 1975, ANGELO PUIG, the defendant, was employed as the director of the Special Summer Food Service Program of Youth In Government.

8. During July and August, 1975, IRMA ANES, the defendant, was listed on the books of Youth In Government as its "administrative chief."

9. During July and August, 1975, SUSAN HOROWITZ and JOHN SAMMARCO, the defendants, were listed on the books of Youth In Government as "site monitors".

COUNT ONE

10. From on or about the 1st day of November, 1974, up to and including the 1st day of January, 1976, in the Southern District of New York and elsewhere, BARTHOLOMEW BUIGUES, ANGELO PUIG, IRMA ANES, SUSAN HOROWITZ, and JOHN SAMMARCO, the defendants, unlawfully,

willfully and knowingly did combine, conspire, confederate and agree together and with each other, and with others to the Grand Jury known and unknown, to defraud the United States and to commit offenses against the United States, to wit, violations of Title 18, United States Code, Section 287.

OBJECTS OF THE CONSPIRACY

11. It was part of said conspiracy that the defendants would and did agree to defraud the United States and a department and agency thereof, to wit, the United States Department of Agriculture, by causing the United States Department of Agriculture to reimburse Youth In Government for work supposedly performed by certain of its employees in the Special Summer Food Services Program, whereas, in truth and in fact, said employees performed little or no work and were not entitled to the salaries paid them.

12. It was further part of said conspiracy that the defendants would and did make and present to the United States Department of Agriculture, a department and agency of the United States, claims upon and against the United States, to wit, "Food and Nutrition Service Reimbursement Vouchers", knowing such claims to be false, fictitious, and fraudulent.

MEANS OF THE CONSPIRACY

13. Among the means by which the defendants would and did carry out the conspiracy were the following:

(a) In June, 1975, BARTHOLOMEW BUIGUES, the defendant, would and did hire IRMA ANES, the defendant, as "administrative chief" of Youth In Government's Special Summer Food Services Program at a salary of \$200 per week.

(b) In June, 1975, BARTHOLOMEW BUIGUES, the defendant, would and did hire SUSAN HOROWITZ and JOHN SAMMARCO, the defendants, as "site monitors" of Youth In Government's Special Summer Food Services Program at salaries of \$110 per week.

(c) While supposedly working as "administrative chief" of the Special Summer Food Services Program, IRMA ANES, the defendant, would and did work full time at Querer, Inc., a day care center located at 391 East 149th Street, Bronx, New York.

(d) While supposedly working as a "site monitor" of the Special Summer Food Services Program, SUSAN HOROWITZ, the defendant, would and did work full time at Arawak Consulting Corporation, 210 East 86th Street, New York, New York at an annual salary of \$12,000 per year.

(e) Although listed as employees of Youth In Government, JOHN SAMMARCO, IRMA ANES and SUSAN HOROWITZ, the defendants, would and did fail to report regularly at their jobs in the Special Summer Food Services Program.

(f) In July and August, 1975, BARTHOLOMEW BUIGUES and ANGELO PUIG, the defendants, although aware that JOHN SAMMARCO, IRMA ANES, and SUSAN HOROWITZ, the defendants, were not working regularly in the Special Summer Food Services Program, would and did cause salary checks to be issued weekly to these individuals.

(g) In July and August, 1975, BARTHOLOMEW BUIGUES and ANGELO PUIG, the defendants, would and did cause a payroll record book to be kept listing the names and hours of the employees of the Special Summer Food Services Program, in which book it was recorded that JOHN SAMMARCO, IRMA ANES, and SUSAN HOROWITZ each worked seven hours per day, five days per week, for the duration of the Special Summer Food Services Program.

(h) In August, 1975, Youth In Government would and did file claims with the United States Department of Agriculture for expenses incurred in operating its Special Summer Food Services Program, which expenses included the salaries of employees.

OVERT ACTS

In furtherance of said conspiracy and to effect the objects thereof, the following overt acts, among others, were committed in the Southern District of New York:

1. In or about January, 1975, BARTHOLOMEW BUIGUES and ANGELO PUIG, the defendants, held a meeting at 1920 McGraw Avenue, Bronx, New York, to organize the Special Summer Food Services Program for Youth In Government.

2. In or about May, 1975, BARTHOLOMEW BUIGUES and ANGELO PUIG, the defendants, held a meeting at The Latin Beat, 508 Van Nest Avenue, Bronx, New York, to organize further the Special Summer Food Services Program for Youth In Government.

3. On or about the 27th day of June, 1975, SUSAN HOROWITZ filled out an application for employment in the Special Summer Food Services Program of Youth In Government.

4. From on or about the 7th day of July, 1975, and continuously thereafter up to and including the 16th day of April, 1976, SUSAN HOROWITZ, the defendant, was employed as a staff associate at Arawak Consulting Corporation, 210 East 86th Street, New York, N.Y.

5. During July and August, 1975, IRMA ANES, the defendant, was employed as a bookkeeper and administrative assistant at Querer, Inc., 391 East 149th Street, Bronx, New York.

6. During July and August, 1975, BARTHOLOMEW BULGUES and ANGELO PUIG, the defendants, wrote weekly salary checks to IRMA ANES, JOHN SAMMARCO, and SUSAN HOROWITZ.

7. In July and August, 1975, IRMA ANES, the defendant, made entries in the payroll book of Youth In Government which stated that IRMA ANES, SUSAN HOROWITZ, and JOHN SAMMARCO had each worked seven hours per day, five days per week, for eight consecutive weeks.

8. On or about the 22nd day of August, 1975, IRMA ANES, the defendant, filed with the United States Department of Agriculture a Food and Nutrition Service Reimbursement Voucher for the Special Summer Food Service Program of Youth In Government for July, 1975.

9. On or about the 29th day of August, 1975, IRMA ANES, the defendant, filed with the United States Department of Agriculture a Food and Nutrition Service Reimbursement Voucher for the Special Summer Food Service Program of Youth In Government for August, 1975.

10. In or about August, 1975, Youth In Government received from the United States Department of Agriculture \$142,747 in payment of its claim for the expenses of the Special Summer Food Services Program for July, 1975.

(Title 18, United States Code, Section 371.)

COUNTS TWO AND THREE

The Grand Jury further charges:

1. Each and every allegation of the Introduction of this Indictment is hereby repeated, realleged, and incorporated by reference in each of Counts Two and Three of this Indictment as though fully set forth therein.

2. On or about the dates hereinafter set forth, in the Southern District of New York, BARTHOLOMEW BUIGUES, ANGELO PUIG, IRMA ANES, SUSAN HOROWITZ, and JOHN SAMMARCO, the defendants, unlawfully, wilfully, and knowingly would and did make and present and cause to be made and presented to the United States Department of Agriculture, a department and agency of the United States, claims upon and against the United States, to wit, Food and Nutrition Service Reimbursement Vouchers, knowing such claims to be false, fictitious, and fraudulent:

<u>COUNT</u>	<u>DATE</u>	<u>MONTH COVERED BY VOUCHER</u>
2	August 22, 1975	July, 1975
3	August 29, 1975	August, 1975

(Title 18, United States Code, Sections 287 and 2.)

Joseph Fildman
FOREMAN

Robert E. Fiske, Jr.
ROBERT E. FISKE, JR.
United States Attorney

US v Buigues 1
76 Cr. 864
11/29/76 2

rk1m 1

(Pollack, M.)

(In open court; jury present.)

THE COURT: Ladies and gentlemen of the jury:

First, I want to thank you for your careful attention, which has been clearly exhibited. The case is now about to be placed in your hands. You have heard the arguments of counsel as to what each believes has been established or not established in the evidence. Of course, it is for you to say what the evidence was and that will guide your deliberations.

The charges against the five defendants, as set out in the indictment, consist of three counts against each one of the defendants. All are accused of having undertaken or aided and abetted the conduct charged as offenses herein. I will discuss each count, in turn.

It is important that you keep clearly in mind, as you consider this case, what are the charges in the indictment. Alleged unearned salaries are the keys to the contentions involved herein. I will, therefore, read the charges to you from the indictment.

The Grand Jury charges:

"One, in enacting Title 42 of the United States Code, Section 1751 and following, the National School Lunch Act, the Congress of the United States empowered the United

1 States Department of Agriculture to provide food to children
2 participating in non-profit school lunch programs. Pursuant
3 to Title 42 of the United States Code, Section 1761, the
4 United States Department of Agriculture is further empowered
5 to administer Special Summer Food Services Programs for
6 children, which programs were intended to provide food
7 during the summer to children from areas in which poor
8 economic conditions exist.
9

10 "During July and August, 1975, the Special
11 Summer Food Services Program in New York State was admin-
12 istered by the Food and Nutrition Service of the United
13 States Department of Agriculture. The Food and Nutrition
14 Service would and did enter into agreements with private,
15 non-profit organizations designated as 'service institutions'
16 under the National School Lunch Act, that undertook to
17 operate food service programs for needy children with funds
18 provided from the United States. At all times relevant
19 herein, Youth In Government was a non-profit corporation
20 duly organized and existing under the laws of the State of
21 New York, with its principal office at 2176 Amsterdam
22 Avenue, New York, New York. At all times relevant herein,
23 Bartholomew Buigues, the defendant, was chairman of the
24 board of Youth In Government.

25 "In July and August, 1975, Youth In Government,

rkln 3

pursuant to agreement with the Food and Nutrition Service of the United States Department of Agriculture, operated a Special Summer Food Services Program for children in the Borough of Manhattan and in New York City.

"During July and August, 1975, Angelo Puig, the defendant, was employed as the director of the Special Summer Food Services Program of Youth In Government.

"During July and August, 1975, Irma Anes, the defendant, was listed on the books of Youth In Government as its administrative chief.

"During July and August, 1975, Susan Horowitz and John Sammarco, the defendants, were listed on the books of Youth In Government as site monitors.

"From on or about the first day of November, 1974, up to and including the first day of January, 1976, in the Southern District of New York and elsewhere, Bartholomew Buigues, Angelo Puig, Irma Anes, Susan Horowitz and John Sammarco, the defendants, unlawfully, willfully and knowingly did combine, conspire, confederate and agree together and with each other and with others to the Grand Jury known and unknown, to defraud the United States and to commit offenses against the United States, to wit: violations of Title 18 of the United States Code, Section 237.

"It was part of said conspiracy that the defendants

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would and did agree to defraud the United States and the department and agency thereof, to wit: the United States Department of Agriculture, by causing the United States Department of Agriculture to reimburse Youth In Government for work supposedly performed by certain of its employees in the Special Summer Food Services Program, whereas, in truth and in fact, said employees performed little or no work and were not entitled to the salaries paid them.

"It was further part of said conspiracy that the defendants would and did make and present to the United States Department of Agriculture, a department and agency of the United States, claims upon and against the United States, to wit: Food and Nutrition Service, reimbursement vouchers, knowing such claims to be false, fictitious and fraudulent.

"Among the means by which the defendants would and did carry out the conspiracy were the following:

"In June, 1975, Bartholomew Buigues, the defendant, would and did hire Irma Anes, the defendant, as administrative chief of the Special Summer Food Services Program, at a salary of \$200 a week.

"In June, 1975, Bartholomew Buigues, the defendant, would and did hire Susan Horowitz and John Sammarco, the defendants, as site monitors of Youth In Government Special

Summer Food Services Program at salaries of \$110 a week.

"While supposedly working as administrative chief of the Special Summer Food Services Program, Irma Anes, the defendant, would and did work full-time at Querer, Inc., a day care center located at 391 East 142 Street, Bronx, New York, while supposedly working as a site monitor for the Special Summer Food Services Program.

"Susan Horowitz, the defendant, would and did work full-time at Arawak Consulting Corporation, 210 East 86 Street, New York, New York, at an annual salary of \$12,000 per year.

"Although listed as employees of Youth In Government, John Sammarco, Irma Anes and Susan Horowitz, the defendants, would and did fail to report regularly at their jobs in the Special Summer Food Services Program.

"In July and August, 1975, Bartholomew Buigues and Angelo Puig, the defendants, although aware that John Sammarco, Irma Anes and Susan Horowitz, the defendants, were not working regularly in the Special Summer Food Services Program, would and did cause salary checks to be issued weekly to these individuals.

"In July and August, 1975, Bartholomew Buigues and Angelo Puig, the defendants, would and did cause a payroll record book to be kept, listing the wages and hours of

1 rk1m 6

2 the Special Summer Food Services Program, in which book it
3 was recorded that John Sammarco, Irma Anes and Susan Horowitz
4 each worked seven hours per day, five days per week, for
5 the duration of the Special Summer Food Services Program.

6 "In August, 1975, Youth In Government would and
7 did file claims with the United States Department of
8 Agriculture for expenses incurred in operating its Special
9 Summer Food Services Program, which expenses included the
10 salaries of employees."

11 The indictment, then, contains a recitation of
12 what is known as "overt acts," which I will read to you
13 a little later in these instructions.

14 I have read to you Count 1, thus far. Counts
15 2 and 3 read as follows:

16 The Grand Jury further charges:

17 "Each and every allegation of the introduction
18 of this indictment is hereby repeated, realleged and
19 incorporated by reference in each of Counts 2 and 3 of
20 this indictment as though fully set forth therein.

21 "On or about the dates hereinafter set forth in
22 the Southern District of New York, Bartholomew Buigues,
23 Angelo Puig, Irma Anes, Susan Horowitz and John Sammarco,
24 the defendants, unlawfully, willfully and knowingly would
25 and did make and present and cause to be made and presented

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2 to the United States Department of Agriculture, a department
3 and agency of the United States, claims upon and against
4 the United States, to wit: Food and Nutrition Service
5 reimbursement vouchers, knowing such claims to be false,
6 fictitious and fraudulent."

7 In Count 2, the date of that presentation was
8 August 22, 1975, for the month covered by the voucher, July,
9 1975; and in Count 3, the presentation was on August 29,
10 1975, the month covered by that voucher, August, 1975.

11 As you have heard from the indictment -- and I
12 should tell you that a separate crime or offense is charged
13 against each of the defendants in each of the three counts
14 of the indictment -- each offense and the evidence pertaining
15 to it should be considered separately by the jury. The
16 fact you may find all or some of the accused guilty or not
17 guilty of one of the offenses charged, should not control
18 your verdict as to any other offense charged against any
19 of the defendants. It is your duty to give separate personal
20 consideration to the case of each individual defendant.
21 When you do so, you should analyze what the evidence in the
22 case shows with respect to that individual, leaving out
23 of consideration, entirely, any evidence omitted solely
24 against some other defendant or defendants. Each defendant
25 is entitled to have his or her case determined from evidence

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as to his or her own acts and statements and conduct, and any other evidence in the case which may be applicable to him or to her.

Now, in more detail, I turn to the first count, which is the so-called "conspiracy count."

The first count of this indictment is a conspiracy count. Before you may convict any defendant under this count, the following essential elements must be established beyond a reasonable doubt by the Government:

First, you must be satisfied that the conspiracy charged did in fact exist. That is, that sometime between November 1, 1974 and January 1, 1976, a scheme, an agreement existed between defendants on trial and any other co-conspirator, whether or not on trial or named in the indictment, to defraud the Government and one of its agencies, by claims for reimbursement of unearned salaries in the Special Food Services Program.

Second, the Government must establish a specific intent of the defendant under consideration to violate the substantive statute; that is, the law that I have read to you that applied; that is, to defraud the United States or to submit to the United States Department of Agriculture, false, fictitious, fraudulent claims.

Third, that the defendant under consideration,

1 knowingly and willfully associated himself or herself with
2 a conspiracy; and

3
4 Fourth, that one of the conspirators, anyone,
5 knowingly committed at least one or more of the overt acts
6 set forth in the indictment at or about the time and place
7 alleged.

8 You must first consider whether, in fact, the
9 scheme or conspiracy charged in this indictment existed.
10 What is a conspiracy? A conspiracy is a combination or
11 scheme or agreement of two or more persons, by concerted
12 action, to accomplish a criminal or unlawful purpose or
13 some purpose not in itself criminal or unlawful, by criminal
14 or unlawful means.

15 The gist of the crime of conspiracy is the
16 unlawful combination or agreement scheme, to violate
17 the law. Whether or not the defendant accomplished what it
18 is alleged the defendant conspired to do, is immaterial to
19 the question of guilt or innocence of conspiracy. The
20 crime of conspiracy relates to scheming to do the unlawful
21 thing.

22 A conspiracy has sometimes been called "a partner-
23 ship in criminal purpose in which each member becomes the
24 agent of every other member." However, to establish a
25 conspiracy, the Government is not required to show that two

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or more persons sat around a table and entered into a solemn compact, orally or in writing, stating that they have formed a conspiracy to violate the law, setting forth details of the plan, the means by which the unlawful project is to be carried out, or the part to be played by each conspirator. Indeed, it would be extraordinary if there were such a formal document or specific oral agreement. Your common sense will tell you that, when people in fact undertake to enter into a criminal conspiracy, much is left to the unexpressed understanding.

Conspirators usually do not reduce their agreement to writing or acknowledge them before a notary public, nor do they publicly broadcast their plans. From its very nature, a conspiracy is almost always characterized by secrecy, rendering detection difficult.

Thus, it is sufficient if two or more persons in any manner, through any contrivance impliedly or tacitly, come to a common understanding to violate the law. Express language or specific words are not required to indicate assent or attachment to a conspiracy. On the other hand, proof concerning the accomplishment of the object of a conspiracy may be the most persuasive evidence of the actual existence of the conspiracy itself; and to simplify this a bit more, success of the venture is the best proof

1 rk1m 11

2 of the agreement.

3 In determining whether there has been an unlawful
4 scheme or agreement, you may judge acts and conduct of the
5 alleged members of the conspiracy which are done to carry
6 out an apparent criminal purpose. The old adage, "Actions
7 speak louder than words," is applicable here. Usually,
8 the only evidence available is that of disconnected acts
9 on the part of the alleged individual conspirators, which
10 acts, however, when taken together in connection with each
11 other, and with the reasonable inferences flowing therefrom,
12 show a conspiracy or agreement to secure a particular
13 result as satisfactorily and conclusively as more direct
14 proof.

15 If, upon such consideration of all the evidence,
16 direct and circumstantial, you find beyond a reasonable
17 doubt that the minds of the alleged conspirators met in an
18 understanding way and that they agreed, as I have explained
19 a conspiratorial agreement to you, to work together in
20 furtherance of the unlawful scheme alleged in the indict-
21 ment, then proof of the existence of a conspiracy has been
22 established.

23 In this connection, it is not necessary for the
24 Government to prove the success, nor completion of the
25 object of the conspiracy. As the conspiracy is basically

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the agreement to violate the law, it may exist even though the final objectives were never accomplished.

The period of time embraced by the indictment for the existence of the alleged conspiracy runs from on or about November 1, 1974 to January 1, 1976. It is not necessary for the Government to prove that the conspiracy started and ended on those specific days. It is sufficient if you find that, in fact, the conspiracy was formed and that it existed for some substantial time within the period set forth in the indictment and that any one of the several acts mentioned in the overt act section of the indictment was committed during that period.

The indictment charges that the conspiracy in question had two unlawful objects or goals:

The first was to defraud the United States and one of its departments, the Department of Agriculture, by causing that department to reimburse an organization called "Youth In Government" for work supposedly performed by its employees that had not been in fact performed.

The second object of the conspiracy, charged in the indictment, was to violate Title 18 of the United States Code, Section 287, which makes a crime the filing of false, fictitious and fraudulent claims against the United States.

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1
2 It is not necessary that the Government prove
3 that there was a conspiracy to accomplish both of those
4 objects. The Government will have sustained its burden of
5 proof on the conspiracy count if it has proved beyond a
6 reasonable doubt that there was a conspiracy to accomplish
7 at least one of these illegal goals.

8 In order to find there was a conspiracy to defraud
9 the United States, you may, but need not find that the
10 Government lost money or was intended to lose money as
11 the result of the conspiracy. Defrauding in this connection
12 means interfering with, or obstructing one of the lawful
13 functions of the United States Government -- in this case,
14 the function of the United States Department of Agricul-
15 ture, in administering the Special Summer Food Services Program--
16 by deceit, craft or trickery or by means that are dis-
17 honest. A conspiracy that included as one of its goals,
18 submission of fraudulent or false information to a depart-
19 ment of the United States, such as the Department of
20 Agriculture, in a matter within its jurisdiction, would
21 be a conspiracy to defraud the United States.

22 Once satisfied that the conspiracy charged
23 existed, you must ask yourself who its members were. In
24 deciding whether a defendant was a member of the conspiracy,
25 you should consider whether on all the evidence, the

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defendant knowingly and purposely entered the conspiracy.

In determining whether a defendant became a member of the conspiracy, you must determine not only whether he participated in it, but whether he did so with knowledge of its unlawful purpose. Did he join with an awareness of at least some of the basic aims and purposes of the conspiracy? Knowledge may be inferred from a defendant's conduct, from his or her acts, from his or her statements and from all the surrounding circumstances. It is not necessary that the defendant be fully informed as to the details of the scope of the conspiracy in order to justify the inference of knowledge on his or her part. To have guilty knowledge, the defendant need not know the full extent of the conspiracy and all of its activities and actors.

I want to caution you that a defendant's mere association with one or more of the conspirators does not make one a member of the conspiracy, nor is knowledge without participation sufficient. What is necessary is that a defendant participate at some time in the course of the scheme, not necessarily from the inception, but any time during its course, with knowledge of at least some of the purposes of the conspiracy and with specific intent to aid and participate in the accomplishment of those unlawful

1 rklm 15

2 ends.

3 Once you have found a conspiracy to exist and a
4 defendant to have knowingly participated in it, the extent
5 of his or her participation has no bearing on the guilt
6 or innocence of that defendant. The guilt of a conspirator
7 is not measured by the extent or duration of his or her
8 participation. Even if a defendant participated in it to
9 a degree more limited than that of another alleged co-
10 conspirator, that defendant is equally culpable so long as
11 that defendant was in fact a conspirator.

12 As I have already mentioned, the fourth element
13 of the crime of conspiracy is that an overt act, to effect
14 the objective of the conspiracy, be committed by at least
15 one of the co-conspirators.

16 An overt act is any step, action or conduct out
17 in the open. That is what overt means; acts which are taken
18 to achieve or further the objective of the conspiracy.

19 The alleged overt acts as charged in the indict-
20 ment are as follows:

21 In furtherance of said conspiracy and to effect
22 the objects thereof, the following overt acts, among others,
23 were committed in the Southern District of New York:

24 1: In or about January, 1975, Bartholomew
25 Buiges and Angelo Puig, the defendants, held a meeting at

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1920 McGraw Avenue, Bronx, New York, to organize a Special Summer Food Services Program for Youth In Government.

Another overt act marked "2," in or about May, 1975, Bartholomew Buigues and Angelo Puig, the defendants, held a meeting at The Latin Beat, 508 Van Nest Avenue, Bronx, New York, to organize further the Special Summer Food Services Program in Youth In Government.

3. On or about the 27th day of June, 1975, Susan Horowitz filled out an application for employment in the Special Summer Food Services Program of Youth In Government.

4. From on or about the 7th day of July, 1975 and continuously thereafter up to and including the 16th day of April, 1976, Susan Horowitz, the defendant, was employed as a staff associate at Arawak Consulting Corporation, 210 East 86 Street, New York.

5. During July and August, 1975, Irma Anes, the defendant, was employed as a bookkeeper and administrative assistant at Querer, Inc., 391 East 149 Street, Bronx, New York.

6. During July and August, 1975, Bartholomew Buigues and Angelo Puig, the defendants, wrote weekly salary checks to Irma Anes, John Sammarco and Susan Horowitz.

7. In July and August, 1975, Irma Anes, the defendant,

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made entries in the payroll book of Youth In Government, which stated that Irma Anes, Susan Horowitz and John Sammarco had each worked seven hours per day, five days per week, for eight consecutive weeks.

8. On or about the 22nd day of August, 1975, Irma Anes, the defendant, filed with the United States Department of Agriculture a Food and Nutrition Service reimbursement voucher for the Special Summer Food Services Program of Youth In Government for July, 1975.

9. On or about the 29th day of August, 1975, Irma Anes, the defendant, filed with the United States Department of Agriculture a Food and Nutrition Service reimbursement voucher for the Special Summer Food Services Program of Youth In Government for August, 1975.

10. In or about August, 1975, Youth In Government received from the United States Department of Agriculture \$142,747 in payment of its claim for the expenses of the Special Summer Food Services Program for July, 1975.

As I have already indicated, it is not necessary for the Government to prove that each member of the conspiracy committed or participated in any particular overt act of the ten which I have read to you.

Also, the Government is not required to prove every one of the ten overt acts charged. It is sufficient

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if the Government proves the commission of at least one, any one of the acts alleged to have occurred charged as overt acts, at or about the time alleged.

When people enter into a conspiracy to accomplish an unlawful end, they become agents for one another in carrying out the conspiracy. Hence, the acts or declarations of one, in the course of the conspiracy and in furtherance of the common purposes, are deemed to be the acts of all, and all are responsible for such acts.

Accordingly, if you find, in accordance with these instructions, that the alleged conspiracy existed and the defendant or alleged co-conspirators were participants in it, then acts done and statements and declarations made in furtherance of the conspiracy by the persons found by you to have been members of the conspiracy, may be considered against the defendant whom you find was a member, even though such acts or deliberations were made in the absence and without the knowledge of that defendant.

It is important to note that this principle applies only to the acts and declarations done or made during the continuance of the conspiracy and in furtherance thereof; that is, to carry out an unlawful objective or purpose of the conspiracy. It does not apply to acts or declarations which do not have these characteristics.

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The defendants are charged in Counts 2 and 3 with the making and presenting of false claims against the United States. Count 1 is scheming to do so. Counts 2 and 3 were the actual making and presenting of false claims against the United States. These Counts 2 and 3 charge a violation of Title 18, United States Code, Section 237, which reads as follows:

"Whoever makes or presents to any person or officer of the United States or to any department or agency thereof any claim upon or against the United States or any Department or agency thereof, knowing such claim false, fictitious or fraudulent, commits a crime."

Before you may convict any defendant on either, Count 2 or 3, you must be satisfied beyond a reasonable doubt of each of the following essential elements as to him or her:

1. That on or about the date set forth in each count, the defendant whom you are considering made or presented or aided and abetted another or others in the making or presentation of a claim against the United States to a department or agency thereof.

2. That the claim was false, fictitious or fraudulent.

3. That the defendant you are considering knew

the claim to be false, fictitious or fraudulent.

4. That the defendant acted knowingly, willfully and unlawfully.

With respect to the first essential element, that the defendant made or presented a claim against the United States through a department or agency of the United States, the language describing this element is largely self-explanatory. To make or to present is simply to cause to be filed or to file a claim in a manner that would normally cause the department or agency to act on that claim.

The claims referred to in Counts 2 and 3 are Food and Nutrition Services reimbursement vouchers. You have heard testimony that these vouchers are the means by which sponsors participating in the Special Summer Food Services Program seek reimbursement for their expenses incurred in running the program. Although there appears to be no dispute on this point, you must nevertheless find beyond a reasonable doubt that these vouchers are claims against the United States.

You must also find that these claims were made or presented to an agent or department of the United States. I charge you as a matter of law that the United States Department of Agriculture is a department and agency of the United States.

1
2 In order to convict a defendant under either
3 Count 2 or Count 3, you must find that the Food and Nutrition
4 Service reimbursement vouchers were false, fictitious or
5 fraudulent, and that the defendant you are considering
6 knew that to be so.

7 The word "false," as used in the indictment,
8 means the claim was untrue when made, and was then known
9 to be untrue by the person making it or causing it to be
10 made.

11 The word "fictitious" means that the claim
12 contained matters that were contrived, invented or imaginary.

13 The word "fraudulent" means that the claim was
14 falsely made and with the purpose of intent to deceive.

15 Before you can convict any defendant of either
16 count, you must find beyond a reasonable doubt that he or
17 she acted knowingly and willfully, with the specific intent
18 to violate the law.

19 Now, an act is done knowingly if it was done
20 voluntarily and purposely and not because of mistake,
21 accident, mere negligence or any other innocent reason.

22 An act is willful, if it is done knowingly, will-
23 fully, and with a bad motive or purpose.

24 To establish specific intent, the Government
25 must prove that the defendant knowingly did an act that the

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law forbids or knowingly failed to do any act which the law requires, purposely intending to violate the law.

Knowledge and willfullness of a defendant need not be proved by direct witnesses. Like any other facts in issue, it may be established by circumstantial evidence.

Here, as in other phases of the case, the significant fact is the defendant's state of mind. It is obviously impossible to prove the operation of a defendant's mind because you can't look into a person's mind and see what his intentions are or were, but the proof of the circumstances surrounding the transaction may well supply an adequate and convincing basis or a finding that the defendant acted willfully.

The actions of a person must be set in their time and place, just as the full meaning of a word is commonly understood only in its relation to other words in a sentence or its context. So, the meaning of a particular act or conduct may depend on the circumstances in which it is found or surrounding it.

In determining this issue, you are entitled to consider any statements made and acts done or omitted by the defendant and all facts and circumstances in evidence which may aid you in determining his or her state of mind.

With respect to Counts 2 and 3, you will recall

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that I had used the term "aiding and abetting." It is not necessary that the Government prove that each defendant personally did each act charged. For example, it is unnecessary to sustain a conviction under Count 2 or Count 3 to show that a defendant actually participated personally in the preparation of the reimbursement vouchers or in the filing of them with the Department of Agriculture. A Federal statute provides:

"Whoever commits an offense against the United States, or aids, abets, counsels, commands, induces or procures its commission, is guilty of a crime."

While there is no precise rule as to what acts constitute aiding and abetting, it is enough that a defendant in some manner associated himself or herself with the illegal venture; that such defendant participated in it, as something that he or she wished to bring about, or that he or she sought by his or her actions to make it succeed.

One who aids or abets the commission of a crime is equally guilty as the person who actually and physically committed it.

It is not sufficient to show mere knowledge of a false filing to find that a defendant was an aider and abettor. You must find that a defendant knowingly and intentionally participated in activities such as the receipt

rk1m 23

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"Whoever commits an offense against the United States, or aids, abets, counsels, commands, induces or procures its commission, is guilty of a crime."

While there is no precise rule as to what acts constitute aiding and abetting, it is enough that a defendant in some manner associated himself or herself with the illegal venture; that such defendant participated in it, as something that he or she wished to bring about, or that he or she sought by his or her actions to make it succeed.

One who aids or abets the commission of a crime is equally guilty as the person who actually and physically committed it.

It is not sufficient to show mere knowledge of a false filing to find that a defendant was an aider and abettor. You must find that a defendant knowingly and intentionally participated in activities such as the receipt

1 of money consciously taken for work not performed which,
2 when included on the claims filed with the Government,
3 caused the reimbursement vouchers to be inflated, false,
4 fictitious and fraudulent.
5

6 If you find such participation and such receipt
7 of unearned salaries by a defendant with knowledge and
8 intent, that payment or reimbursement would be made or
9 sought from the Government or its agency through reimburse-
10 ment vouchers which thus were inflated, false, fictitious
11 and fraudulent, you may find that defendant guilty, as an
12 aider and abettor of the making and filing of the false
13 claims.

14 A person may be guilty of causing a false claim
15 to be presented to the United States, even though he uses
16 an intermediary, innocent or not, to make and actually
17 pass on the claim to the United States.

18 I now want to turn to some general rules applicable
19 to trials, criminal trials, and the trial of this case:

20 In order to return a verdict of "not guilty"
21 or "guilty" as to any defendant on any of the three counts
22 in this case, each juror must agree thereto. Such a
23 verdict must be unanimous on the count which you are con-
24 sidering and as to the defendant you are considering, and
25 must represent each juror's individual judgment.

consciously taken for work not performed which, included on the claims filed with the Government, the reimbursement vouchers to be inflated, false, gross and fraudulent.

If you find such participation and such receipt of salaries by a defendant with knowledge and that payment or reimbursement would be made or from the Government or its agency through reimbursement vouchers which thus were inflated, false, fictitious and fraudulent, you may find that defendant guilty, as an abettor of the making and filing of the false

A person may be guilty of causing a false claim presented to the United States, even though he uses an intermediary, innocent or not, to make and actually file the claim to the United States.

I now want to turn to some general rules applicable to civil trials, criminal trials, and the trial of this case:

In order to return a verdict of "not guilty" as to any defendant on any of the three counts in this case, each juror must agree thereto. Such a verdict must be unanimous on the count which you are considering and as to the defendant you are considering, and I present each juror's individual judgment.

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1
2 It is your exclusive function to determine the
3 facts on the basis of your consideration of the evidence.
4 On the other hand, it is your duty to accept my instructions
5 as to what the law is, and that must be followed in this
6 case. You may not disregard the law or attempt to mitigate
7 it or rewrite it. Applying these instructions on the law
8 to the facts as you find them, you will decide whether or
9 not the defendant on trial before you is guilty of the
10 charges that have been made against him or her or any of
11 them.

12 Your recollection of the facts is what counts
13 here and not the recollection of counsel or even my recollec-
14 tion. It is for you to determine the weight you will give
15 to the evidence, the credibility you will extend to the
16 witnesses who testified and the reasonable inferences that
17 are to be drawn from the evidence that has been received.

18 As I have indicated earlier, an indictment defines
19 the charges against the defendant as to which the evidence
20 at the trial must be addressed. An indictment is not
21 evidence that a crime has been committed and no inference
22 of any kind may be drawn from its existence.

23 Each defendant pleaded "not guilty" to the
24 indictment. That means that the Government has the burden
25 of proving guilt beyond a reasonable doubt with respect to

1 or uncertain to the point where you have a doubt which
2 would cause a prudent person to hesitate in a matter of
3 importance to him or her, then you have not been convinced
4 beyond a reasonable doubt.
5

6 In this case, the evidence produced has been
7 both of direct and indirect or circumstantial character.
8 The Government contends that its evidence establishes each
9 defendant's guilt on each charge beyond a reasonable doubt.
10 Each defendant contends that no evidence has overcome the
11 presumption of his or her innocence and, at least, there is
12 a reasonable doubt as to his or her guilt.

13 You will apply to all the evidence the same
14 standard of proof to satisfy yourself of the guilt of the
15 defendant beyond a reasonable doubt or else you must acquit
16 that defendant. You must make your own evaluation of the
17 evidence, including the testimony given by each of the
18 witnesses, and determine the credibility which you choose
19 to give to such evidence.

20 In weighing the testimony of witnesses, you may
21 consider their relationship, if any, to the parties involved,
22 namely, to the Government or to the defendant, and any bias
23 against or interest in the parties or in the outcome of
24 the case; the witness' manner while he or she was testifying,
25 that is, the witness' candor, intelligence, whether the

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2 witness equivocated or whether the witness was frank and
3 straightforward; the extent to which the witness has been
4 corroborated or contradicted by other credible evidence or
5 circumstances or inconsistencies in the testimony.

6 Interest, as you know, creates a motive for
7 falsely testifying. The greater the interest, the stronger
8 the motive, and the defendant's interest in the result of
9 a trial is of a character possessed by no other witness.

10 If you believe a witness has willfully testified
11 falsely before you, you are privileged to disregard his
12 or her testimony or you don't have to. A man or woman may be
13 lying about part of what he or she says and may be telling
14 the truth about other parts. It is for you to decide, after
15 you have scrutinized the evidence and weighed the demeanor
16 of the witnesses.

17 In appraising any defendant's credibility, you
18 may take his or her interest in the outcome of the situation.
19 However, it by no means follows that simply because a
20 person has a vital interest in the end result, that he or
21 she is not capable of telling a truthful and straightforward
22 story. It is for you to decide to what extent, if at all,
23 the interest of a defendant has colored that defendant's
24 testimony.

25 You have heard testimony that the defendants,

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2 John Sammarco and Angelo Puig, made certain statements to
3 Government agents. If you find that either of these defend-
4 ants did make the statements accorded to them, then you
5 may give those statements such weight as you believe they
6 deserve under all of the facts and circumstances which
7 were brought out in the evidence.

8 There has been testimony that the defendants,
9 John Sammarco and Angelo Puig, also made a number of
10 statements to Government agents tending to show their
11 innocence. There has also been testimony that these state-
12 ments were false.

13 I charge you that exculpatory statements, state-
14 ments to excuse one or exonerate one, when shown to be
15 false, are circumstantial evidence of guilty consciousness
16 and have independent probative force and are to be considered
17 along with all the other facts and circumstances in evidence
18 in respect to that defendant.

19 Certain evidence was given to you of an alleged
20 incident allegedly pertaining to Mr. Puig and of an alleged
21 incident allegedly pertaining to Mr. Buigues, both referred
22 to as "threats," solely for identification of the subject.
23 That testimony has no relevance to any defendant except,
24 respectively, to Mr. Puig and to Mr. Buigues, and was
25 admitted solely against the defendant named in such evidence

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2 to be considered solely as against him, together with all
3 the other facts and circumstances and evidence relating
4 to that defendant.

5 If you credit the testimony as to such an incident,
6 it may, if you decide it had that effect, be evidence of
7 a consciousness of guilt, to be considered together with
8 all the other facts and circumstances and evidence, solely
9 for that purpose and solely in relation only to the particular
10 defendant referred to.

11 The defendants Horowitz, Puig and Buigues, you
12 will recall, introduced evidence tending to establish their
13 good reputation in their community and profession, prior
14 to and subsequent to the indictment in this case. Such
15 evidence may indicate to you that it is improbable that
16 a person of good character would commit the crime charged
17 here. Therefore, the jury should consider this evidence
18 along with all the other evidence in the case, in determining
19 the guilt or non-guilt of the defendants.

20 The circumstances may be such that evidence of
21 good character alone may create a reasonable doubt of the
22 defendant's guilt, although without it, the other evidence
23 may be convincing. However, evidence of good reputation
24 should not constitute an excuse to acquit the defendant if
25 the jury, after weighing all the evidence including the

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2 evidence of good character, is convinced beyond a reasonable
3 doubt that the defendant is guilty of the crime charged.

4 The law recognizes two types of evidence: direct
5 and circumstantial, either of which may be sufficient to
6 convince the jury, providing all the evidence is proved
7 beyond a reasonable doubt.

8 Direct evidence, of course, is evidence given by
9 a witness who is present at a conversation or the commission
10 of an act and testifies as to what he or she saw or what
11 he or she heard or discovered, what he or she knows of her
12 own or his own knowledge; something which comes to him or
13 her by virtue of the senses of sight or sound or smell or
14 touch.

15 Circumstantial evidence is, as most of you know,
16 evidence that tends to prove a disputed fact by proof of
17 other facts in evidence, which has a logical tendency to
18 lead one's mind to conclude that a fact in issue actually
19 exists. Circumstantial evidence should not be given any
20 less weight because it is circumstantial rather than direct.

21 A convenient illustration of circumstantial
22 evidence that I give to juries is this:

23 Suppose, at the time you came into court this
24 morning the sun was shining and there were no clouds in the
25 sky and when you came into this trial courtroom the shades

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1 were drawn and the blinds were down, so you couldn't see
2 outside, and assume you hadn't been outside since you came
3 in, and pretty soon somebody walked through that door into
4 the courtroom with a dripping umbrella and raincoat. When
5 you left outside it was clear, but when this person came in
6 with the dripping umbrella and raincoat, something may have
7 happened outside. You would be entitled to infer from the
8 circumstances, that there is a dripping umbrella and rain-
9 coat and that it is raining outside, even though you do not
10 see the rain outside. Thus, circumstantially, you infer
11 from one fact, the fact being the dripping raincoat and
12 umbrella, some other manner, that is, that it is raining
13 outside.
14

15 Under your oath, you can't allow consideration
16 of the punishment that might be inflicted upon a defendant
17 to influence your judgment in any way or in any sense
18 enter into your deliberation. The decision as to what type
19 of sentence, if any, should be imposed, is solely my
20 responsibility. That rests exclusively on me in the event
21 of a conviction. Your function is to weigh the evidence
22 in the case and to determine whether the defendant engaged
23 in criminal conduct described in the statutes and whether
24 he or she is guilty or not guilty of a particular count
25 you are considering. Your decision must be based solely on

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the evidence and the law and you must not be confused by any argument which takes you away from what the case before you is. You must not be influenced by any assumptions, conjecture or sympathy in the case, either for the defendant or any member of his or her family or otherwise.

In short, you are expected to use your common sense and general experience in evaluating the evidence.

Your verdict in this case, when you get ready to report it, will be on each count and with respect to each defendant, separately, and it will be either "guilty" or "not guilty"; and your verdict will be announced by Mr. Johnson, who sits in the first seat, and who will act as your spokesman. Your spokesman will be provided with a copy of the indictment and with pencil and paper, should you wish to communicate with the Court. Please do not communicate with anyone, even me, except in writing, and have the writing signed or initialled by your spokesman with his name or initials; and do not communicate with anyone, not even me, on how you stand, unless it is to say that you are unanimous on the person and the count mentioned.

If you desire any of the exhibits, these will be sent to you in the jury room upon request. If you want any testimony read, that can be done also. It isn't easy to find the testimony in those stenotype notes, so the more

specific you are, the quicker we can accommodate any request you do make.

I have now concluded my instructions, but I want to take a moment to talk to the lawyers. They may wish to call to my attention something that I may have overlooked or on something as to which I have misspoken, so if you will just relax in your seats for a moment, I will talk to them and come back to you.

(At the side bar.)

THE COURT: Are there any exceptions or requests on the part of the Government?

MR. EPSTEIN: There are none.

THE COURT: Any exceptions or requests on the part of your clients, Mr. Hammer?

MR. HAMMER: No, sir.

THE COURT: Are there any exceptions or requests on the part of your client, Mr. Honig?

MR. HONIG: There are no exceptions or requests.

THE COURT: Are there any exceptions or requests on the part of your client, Mr. Flynn?

MR. FLYNN: Yes, your Honor. I respectfully except to the Court's charge on the issue of specific intent and as I read it, it did not cover the issue.

I respectfully except to taking exception in the

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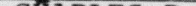
Appellee,

BARTHOLEMEW BUIGUES, ANGELO PUIG,
IRMA ANES, SUSAN HOROWITZ and
JOHN SAMMARCO.

AFFIDAVIT OF SERVICE

CHARLES WALKER, being duly sworn, states:

I am over the age of eighteen years and reside at 7 West 14th Street, New York, NY 10013. I am not a party to this action. On August 4, 1977, I served the within Brief for Appellant Angelo Puig on Joseph Stone, 277 Broadway, New York, NY 10007; Richard Rieder, 161 E. 42nd Street, New York, NY 10017; Ernest Hammer, 225 Broadway, New York, NY 10007; W. Paul Flynn, 132 Temple, New Haven, Conn. 06510; and the United States Attorney for the Southern District of New York, United States Courthouse, Manhattan, New York, by depositing copies in postpaid, properly addressed envelopes in an official depository of the United States Post Office.


CHARLES R. WALKER

Sworn to before me this
4th day of August, 1977.

DANIEL J. SULLIVAN
Notary Public, State of New York
No. 31-9239273
Qualified in New York Co.
Commission Expires March 2, 2017